

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WALTER H. ISAAC, JAMES S. HONAN
and EDGAR E. RIECKE

Appeal No. 1998-2305
Application No. 08/670,466

ON BRIEF

Before KIMLIN, DELMENDO, and JEFFREY T. SMITH, *Administrative Patent Judges*.
JEFFREY T. SMITH, *Administrative Patent Judge*.

ON REQUEST FOR REHEARING

This is in response to Appellants' letter, filed May 31, 2002, responding to our decision, mailed March 22, 2002.¹ In our previous decision, we affirmed the rejection of claims 1, 3 and 5 to 13 under 35 U.S.C. § 103(a) over Takeuchi and reversed the rejection of

¹ We will treat Appellants' letter as a Requests for reconsideration under 37 CFR § 1.197(b). In addition to the letter, Appellants presented two declarations under 35 U.S.C. § 1.132.

claims 1, 3 and 5 to 13 under 35 U.S.C. § 103(a) over Ishigaki. We also reversed the rejection of claims 1, 3 and 5 to 13 under 35 U.S.C. § 103(a) over Wang and remanded the application to the Examiner for proper consideration of the declaration under 37 CFR 1.130, filed March 17, 1997.²

Appellants have not argued that our decision was based on erroneous findings of fact concerning the prior art. Rather, we find the Appellants in essence are expressing their disagreement with the merits of our opinion. In support of their position, Appellants for the first time present a declaration from Honan and a declaration from Isaac. We will not consider any new arguments and/or new evidence which were not raised in the Brief. See 37 CFR § 1.192(a) (1997) (“Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.”); see also Ex parte Hindersinn, 177 USPQ 78 (Bd. App. 1971).

The evidence presented by Appellants has not been evaluated by the Examiner in this case. Appellants have not argued that there was good cause for presenting this evidence subsequent to the Board’s decision. See 37 CFR § 1.195 (1969). Attempting to present evidence not presented to the Board prior to its decision and which is advanced for the first

² The Examiner has indicated the declaration complies with 37 CFR 1.130 and the Wang reference has been disqualified as prior art. (Paper no. 20).

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time in a forum (i.e., a request for rehearing) that ordinarily excludes input by the Examiner would be inimical to effective and efficient appellate review.

Appellants' request for rehearing has been granted to the extent of reconsidering our decision, but is denied with respect to making any changes therein.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REHEARING DENIED

EDWARD C. KIMLIN
Administrative Patent Judge

ROMULO H. DELMENDO
Administrative Patent Judge

JEFFREY T. SMITH
Administrative Patent Judge

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